

Planning Board – Town of Spencer

Minutes



Regular Planning Board Meeting
Tuesday, December 21, 2010 at 7:00 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:10 p.m.

Planning Board Members Present: Chairman Fabio Carrera, Shirley Shiver, Paul Sauvageau, and Robert Ceppi.

Planning Board Member Absent: None

Staff present: Michelle Buck, Town Planner, and Bea Meechan, Senior Clerk, ODIS.

While waiting for the arrival of Chair Carrera, the members decided to conduct other business first.

New Business:

A. ANR – David and Michelle Terry, 2 Howe Road, boundary line adjustment. The applicants owned Lot 3R and started construction of a new house in December of 2009. As the construction was nearing completion the applicants discovered that the deck and the porch are not within the setback requirements. In regards to the porch they sought a special permit from the ZBA, and were granted an approval allowing the front porch being constructed 51-feet from the front lot line; 55-feet required. To resolve the side setback issue, the applicants purchased a small piece of land from the abutting neighbor. The side setback requirement is 25-feet; the current setback on one angle is 25.2-feet and 25.8-feet from the other angle.

The purpose of the ANR plan is to create parcel 3R-1 containing 444-square feet, not a buildable lot, and conveyed from Ronald Gresty, the abutting neighbor to the applicants. This will make the side setback in compliance with the bylaw.

The Board reviewed the plan at this time. The Board noticed the septic tank on the abutting neighbor (Lot 4R) is very close to the property lot line. The Board questioned on whether there is any setback requirement for the septic tank, if there is, what is the minimum required? Ms. Meechan contacted Mr. Lee Jarvis, Health Agent and found there is a 10-foot setback requirement from the property lot line to the septic tank. The septic tank in question has 10.3-foot setback from the property lot line.

Mr. Sauvageau made a motion to approve the ANR plan submitted and to have Ms. Buck endorsed the mylar and the plan. Mr. Ceppi seconded the motion and the vote was 3-0 in favor.

Old Business:

A. Zoning Amendment. At the previous meeting, the Board of Selectmen (BOS) requested the Planning Board consider amending the Zoning Bylaw to eliminate the lot size requirement for home based contractors, and also consider allowing a removal of the prohibition on their being located in the LR and VR districts as a general rule.

Ms. Buck prepared a draft amendment (based on preliminary discussion at the last meeting) and submitted this to the members for review. The proposed divided home based contractors into two categories – large and small. There are two options for regulation: special permit or by-right.

The members commented that there is a big difference between the small home-based and large home-based contractor business. The members reviewed the draft and made the following questions and comments:

- There is no specification about the Town Center district in the proposed amendment. Properties in the LR district, in some cases, contain small land areas as in the TC, thus should the TC be included in the proposed amendment?
- Multi-family dwellings are allowed by special permit in the SR and VR; the probability of having more than one small home-based-business on a site is possible. Are there any provisions/restrictions when dealing with “multi-family” settings? (Such as the number of vehicles associated with the business, adequate parking spaces and off-site parking, provide screening from abutters and public, etc).
- If it is a multi-family and also a renting property, the property’s owner should be notified of the small home-based-business.
- If the application meets criteria in the Zoning Bylaw, the Building Inspector shall review and make the determination (approve or not approve). As to small home-based-contractor in the multi-family setting, recommend to be reviewed by the ZBA.
- The Board inquired as to the procedures when the resident applies for a home-based-contractor (small and large) business. How many of Home-Based-Business Contractor application ODIS had received? (The members didn’t recall reviewing any application related to the subject).

Ms. Buck explained currently the home-based-contractor business is prohibited in the SR and RR, the BOS would like to see that being allowed in the VR and LR also. There is nothing mentioned about the TC district in the BOS request. The Board could include the TC and establishing provisions for multi-family, if the Board wishes. Restriction on the number of vehicles, providing adequate parking spaces and off-street parking are already in the bylaw.

When the resident is contemplating to have a home-based-contractor business, *whether it is a small or large category*, the individual is required to submit a “Business Certificate Application” to ODIS first. If the property is rented, the name and signature of the property’s owner is required on the application. The Building Inspector reviews the application and checks with the Zoning Bylaw, if it meets the criteria, he will approve the application. *The Town Clerk then issues a “Business Certificate” to the applicant.* If the application doesn’t meet the provision required, the Building Inspector will deny it. The applicant has an option to appeal to the ZBA if not agree on the finding by the Building Inspector.

Ms. Meechan, ODIS clerk, explained for the past 4 years, there was only one application for a home-based-contractor business (landscaping and irrigation business), the property was in RR district, has more than 2 acres in area, met all criteria and was granted a special permit by the ZBA.

The Board asked if the Business Certificate is a license or a permit which issued annually, or how often?

Ms. Buck replied if the information on the application doesn’t trigger the criteria for Special Permit, then it will qualify for the Business Certificate, and is up for renewal every 4 years.

The members agreed on Option 2: b specified on the draft amendment: Small Home Based Contractor shall be allowed as follows without the need for a special permit, but must conform to the following provisions in addition (5 items) to those listed in paragraph 4.8.3.B. The Board suggested the following; adding the Town Center to the rest of the districts to number 1; and define the term of “construction vehicles”, construction vehicles could be a pick-up truck, a toll truck, or a bulldozer. [A pick-up truck is more applicable, to the small home-based-business, as opposed to a larger truck or bulldozer]

The Board recalled there was a discussion on vehicles over one ton in capacity (at the last meeting) which is not present in the draft amendment being reviewed tonight.

Ms. Buck explained that “vehicles over one ton in capacity” is under Section 4.8.4, in the current bylaw, which requires a special permit from the ZBA.

Ms. Buck said she will incorporate all the above suggestions and comments to the draft zoning amendment. Ms. Buck suggested having a discussion on the Inclusionary Zoning Bylaw at the meeting scheduled in January, 2011. Next is scheduling a public hearing for both zoning amendment and Inclusionary Zoning Bylaw for the February 15, 2011 meeting.

Note: Mr. Carrera arrived at 7:40 p.m.

B. Continued public hearing – Major site plan review, FLEXcon, 5& 11 South Spencer Road. Mr. Carrera opened the hearing at 7:45 p.m. The necessary information/comments from Cullinan Civil Engineering (CCE), Town Peer Engineer, and the approval on the design of the drop inlet by Mr. McNeil) weren’t available to the Board at the last meeting. The Board made a motion to continue the hearing to tonight. [Note: CCE submitted the comments (dated Dec 7) to ODIS, and was distributed to all members prior to the meeting].

Ms. Elizabeth Clark from Beals & Thomas said CCE has commented back to the response made by Beal & Thomas. There was a minor modification to the plan requested by the Conservation Commission (ConCom), and received an approval from the Commission on the Dec 8 meeting. Ms. Clark pointed out the changes on the plan to the Board at this time. The revision plan was already submitted to ODIS previously.

Ms. Buck asked if the revision plan dated 11/5/2010 and submitted to ODIS reflected the modification made. *Ms. Clark concurred.*

Ms. Buck said that CCE had addressed concerns from the previous meeting. CCE also recommended the following:

- Checking “a 60-foot buffer requirement with the Building Inspector/Zoning Enforcement Officer.”

The Building Inspector concurred that the buffer wasn’t applicable in this case.

- The proposed water and sewer connections plans shall be reviewed and discussed with the designated department - Water & Sewer Department (WSD).

WSD had seen the revised plan last week and has no comments.

The members reviewed the comments from CCE at this time. The Board asked for explanation on the following:

- CCE defers final consideration to the Town department on the capacity of Stormwater piping (the pipe flow calculation from the Stormwater Report shows the site flow to DI-01 as 9.76 efs and the pipe capacity from DI-10 to the existing fared end as 10.27 efs), referencing to Page 6. (DI is Drop Inlet). Has the Town Official reviewed the plan yet?

Ms. Clark said with the reduction in the impervious area and the incorporation of the infiltration system reduces the flow capacity of the pipe (9.76 efs; full capacity is 10.27 efs). This will improve the existing condition, not worsen it.

Ms. Buck explained Mr. McNeil, U&F, had has discussions with Ms. Clark on the design drop inlet. The design was finally approved by Mr. McNeil, and a copy was forwarded to Ms. Buck on Dec 9. The design copy will be part of the Certificate of Decision.

- A clarification on “the project limits” (this should include all areas of the site that are proposed *to be disturbed or altered*) on Page 6.

Ms. Clark said as part of their conditions, ConCom requested the “project limits” such as the control vegetation area, stormwater management, and construction plans, etc, be submitted in detail prior to starting construction. She also stated that the plans presented were sufficiently clear for Planning Board purposes.

- In referencing to Page 7, stated that dimensions for the ADA spaces have been addressed. Is the Board required to review the dimensions for ADA spaces as part of Site Plan Review?

Ms. Buck responded the standard dimensions for the ADA spaces must comply with specific guidelines regulated by Federal agencies, not the Board. Also, the crosswalks of concern were improvements to existing conditions. *Ms. Buck said she will add a condition number 7 in the Decision stating "Planning Board approval does not constitute review of ADA compliance."*

- The Board asked Ms. Clark to address a comment, on Page 9, where it reads "the roof drainage is intended...a note should be added to this sheet that indicates the entire roof area shall drain to that system." CCE defers to the Planning Board. Why there was no notation made on the plan? What type of roofing – flat, or slope roof?

Ms. Clark explained there is no specific notation identifying that the roof runoff will drain in to the proposed infiltration system. However, the plan **clearly demonstrated** all roof drainage tied into the system. The roof-type for the building is flat-roofing; the roof water might be collected from the center and directed into the infiltration system. The Board could have the subject matter be included as part of the conditions in the Decision.

The Board thought the roof drainage should be included as part of the conditions in the Decision. *Ms. Buck said she will add "the drainage from the entire roof area shall be directed to the infiltration system" as part of the conditions in the Decision.*

The Board reviewed the draft Decision and requested modifications as follows: Under waivers Section 74; it should be 7.4 – adding a point (.) between 7 and 4: Condition # 18 was referencing to condition #22 it should have been #17. The draft Decision consisted of 18 conditions; the final Decision will have 20 conditions including the additional conditions (2) discussed above.

Note: There were no abutters present in this hearing.

Mr. Sauvageau made a motion to close the hearing at 8:15 p.m. Mr. Ceppi seconded the motion and the vote was 4-0 in favor.

Ms. Shiver made a motion to grant an approval on the Certificate of Decision for site plan as amended tonight to FLEXcon Company, Inc., and authorized Ms. Buck to sign the Certificate on behalf of the Board. Mr. Ceppi seconded the motion and the vote was 4-0 in favor.

C. Minor site plan review – Dairy Queen, 291 Main Street, Mr. Leo and Philip Gertsios; applicants – not a public hearing. The additional information [comments from CCE and Massachusetts Department of Transportation (MDOT) on Access Curb cut] was pending at the previous meeting, the Board decided to continue the discussion to tonight. The Board already received response from CCE dated Dec 9, but haven't yet heard anything from the applicants in regards to the Access Curb cut.

Mr. Thomas Michalak, applicants' engineer, said MDOT sent a letter with comments to the applicant, and didn't approve the permit application for Access Curb cut. The Board asked to provide a copy to ODIS for the record. *Graves Engineering Inc (GEI) addressed all comments and modified changes as shown on the revised plan dated Dec 17th, and will be sent to MDOT the following day.* At this point, Mr. Michalak went over the comments with the Board as follows:

1. Provide vertical granite curb on the driveway radii. The curb should be set as shown in MDOT Construction Standard Drawing M/E 106.3.0.
2. Include a detail for new pavement structure with a width less than 4 feet. The sub-base shall include high early strength cement concrete.
3. Calculate the Stopping Sight Distance (SSD) and Intersection Sight Distance (ISD) at the proposed access. The sight distance should meet the minimums shown in MDOT Project Development. The revision plan shows 530 feet sight distance for both East and West bound directions.
4. The radii on driveway entrances must be adequate to allow large vehicles to enter and exit the site. MDOT requires a minimum driveway radius of 30 feet.

Mr. Michalak stated the existing condition has radius of 15- feet on both radii. The vehicles entering and exiting both accesses are standard single use not large vehicles. The applicant is proposing 15-feet for both radii, not changing the layout.

5. The proposed plan must show the western driveway.
6. Provide station and offset information for the PC's and PT's at the driveway openings.
7. Design wheelchair ramps to meet ADA/AAB standards. Wheelchair ramps should be designed in accordance with MDOT Construction Standards. Also, the existing wheelchair ramps at the western driveway do not appear to be in compliance with are current standards. Please make the four wheel chair ramps in front of the site compliant with our standards.

Mr. Michalak said this requirement acquires a minor scope of changes; the plan proposing the wheelchair ramps that would be designed and incorporated into the architect structure, he described the detail on the plan and pointed the location on the plan to the Board. There is no change to the western driveway.

8. Include a traffic management plan that includes all construction signage needed for work inquired within the state right-of-way.
9. The curb-cuts appear to operate as one entrance-only and one exit-only driveway. Add pavement markings and signs to show the use of the curb-cuts.

There is a safety concern on the **exit sign** in regards to the height-level/sight-line. The sign could obstruct the patrons' view from exiting out. Mr. Sauvageau asked if MDOT has a provision in regards **to the sight-line** for the signs.

Mr. Michalak replied aside from the general standard signs and the visibility to traffic, he is not aware of such a provision in question. Ms. Shiver advised to check in the MDOT Project Development and Guidelines' book.

Mr. Michalak said he will look into it. Mr. Sauvageau requested the applicants providing the location of the sign prior to the installation.

The Board inquired on the status of the Access Curb cut permit. Does MDOT in general notify the town of the approved application?

Mr. Michalak said MDOT has yet to finalize the decision. The revised plan will be sent out tomorrow or thereafter.

Ms. Buck said as general practice MDOT Highway Division doesn't send notification on permit approval to the town. Under the Pre-Construction in the Decision, there is a condition specified "the applicant shall provide a copy of the MHD approval to the Town Planner for a determination on whether any changes require Planning Board approval."

The members reviewed the comments prepared by CCE and asked the following questions:

CCE commented the revised plan indicates the arborvitae screening shall be a minimum 6 feet high along the easterly property line. The ZBA preferred an installation of a 5-foot fence for a screening. Could the applicants clarify that?

Mr. Michalak said on the revised plan dated Dec 17 it indicated the 5-foot fence as a screening. Ms. Buck explained the comments received from *CCE were dated Dec 9*. Since then GEI has already revised the plan to reflect the 5-foot fence, *the revision plan being reviewed tonight dated Dec 17*.

The Board asked whether the applicants succeeded on seeking the location of the site sewer/water service, or any other underground utilities.

Mr. Michalak responded with all plans in possession there were no information available. Ms. Buck said such detailed information on sewer and water services is required when there is a proposal on the new connection (sewer/water) service to the existing building – which is not proposed in this case.

There was a discussion in regards to the comment on page 4, number 5 that read "The revised plans provided area drains with sumps and hoods to trap solids...Provided that this area is swept on a regular basis, and that the drain is not used to collect wash off water, these measures seem adequate." Mr. Michalak explained CCE originally recommended the drainage system for the

outside dining area to collect water runoff in this specific location and direct the flows into the existing system. The Board was satisfied with the detailed explanation given from Mr. Michalak.

Ms. Buck said she will make a minor modification to the draft decision:

- Adding date Dec 17, 2010 on to the Plan Dates on the first page.
- In Condition #18 change referencing Condition #22 to Condition #17.
- Adding another condition requesting 2 additional full-size copies and 1 11"x17" of the final set of plans be submitted within 7 days from the date of the Decision.

Ms. Shiver made a motion to grant an approval on the Certificate of Decision for site plan (minor) as amended tonight to applicants Mr. Leo and Philip Gertsios for business known as Dairy Queen located on 291 Main Street, and authorized Ms. Buck to sign the Certificate on behalf of the Board. Mr. Ceppi seconded the motion and the vote was 4-0 in favor.

Other Discussion: Town Planner Report

A. Deer Run Estates. The Town took the surety money from the former owner, Michael Harrington, due to the default on the project. Mr. Harrington's attorney contacted Ms. Buck if the Town would consider retaining Mr. Harrington to finish the road construction process. The hiring procedure must follow the Municipal Procurement Law. Essentially the answer is no, the town cannot retain Mr. Harrington.

B. Follow up on Laureldale Woods. At the last meeting, the Board directed Ms. Buck to check with the Building Inspector on the permit for the construction trailer, and the Health Agent on the nuisance property. There is no permit requirement for the construction trailer being placed at the site. In addition, there is no provision pertaining to the trailer (no lavatory unit) being a nuisance property in the Town Bylaw and the Board of Health's regulations. The owner of the project claimed it is not an abandoned property.

C. CMRPC Technical Assistance Grant. There are technical assistance grants available for municipal programs/plans. This year, technical assistance will be available to help communities in the following two areas:

- 1) to establish partnerships among multiple municipalities, particularly focused on providing municipal services; and
- 2) to achieve sustainable development land use objectives, particularly focused on regional collaboration to designate and promote priority development areas and priority preservation areas.

Ms. Megan DiPrete of CMRPC explained the program is designed for multi towns (at least 2) to co-submit an application, and work together to achieve the goals which could be shared - the use of recreation trails, consolidating municipal services, etc. (Spencer has just submitted an application from another funding source for Mid-State Trail mapping).

Ms. Buck asked the Board for any recommendation or suggestion on the program. The Board discussed other possibilities, including perhaps a project that would benefit the Common Ground Land Trust and suggested working with Ms. Ginny Scarlet. Ms. Buck noted that she would also

Speak with Leicester Planning Board members and review the recommendations of the Leicester Open Space & Recreation plan for possible ideas.

D. Recording of plans. The Board discussed the recording of ANR plans and subdivision plan and the possibility of having the Town (ODIS) managing the duty of recording with the Registry of Deeds. Often the plans do not get recorded in a timely fashion and this is a problem, especially with subdivisions.

C. Inclusionary Housing/Zoning Bylaw. Ms. Buck asked if the Board has any preferences in regards to the number of affordable housing units, and minimum number of lots that would trigger an inclusionary housing bylaw. The Board suggested a threshold of projects larger than 10 lots; calculate the ratio number of affordable units base on total number units (example if 50 units then provided 10% as affordable units, and if more than 50 units; 12% is required for affordable units). Ms. Buck will continue to research this issue.

D. Pine Cliff OSRD. Mr. James Sielis, project's owner, agreed to convey Open Space Parcel A to the Spencer Conservation Commission or to the Town prior to the release of Lot 1. The Board asked whether that has been done, and if not, can the Town request this? Ms. Buck said she is not certain if the Town has the right to demand that because the Definitive Subdivision Plan has yet to be recorded with the Registry of Deeds; Mr. Sielis is still the owner of the property.

With no further discussion Mr. Carrera made a motion to adjourn the meeting at 9:10 p.m. Ms. Shiver seconded the motion and the vote was 4-0 in favor.

Submitted By:

Approved By:

Bea Meechan, Senior Clerk

Fabio Carrera, Planning Board Chairman

List of Documents used on December 21, 2010

- ANR plan and application, 2 Howe Road, David & Michelle Terry.
- Draft Zoning Amendment prepared by Ms. Buck.
- Response to comments from Cullinan Engineer on FLEXcon, dated 12.7.10.
- Revision Plan prepared by Beals & Thomas for FLEXcon project, dated 11.5.10.
- Draft Decision on FLEXcon prepared by Ms. Buck.
- Response to comments from Graves Engineering, Inc., on Dairy Queen, dated 12.9.10.
- Revision Plan prepared by Graves Engineering, Inc., on Dairy Queen, dated 12.17.10.
- Draft Decision on Dairy Queen prepared by Ms. Buck.
- Notification letter from MassDOT to Mr. Gertsios commented on the Access Permit Curb cut application dated 11.26.10, submitted to the Board on 12.21.10.
- Memo from CMRPC on Technical Assistance Grant dated 12/1/2010